

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3292 of 1998

to

FIRST APPEAL No 3304 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

Hon'ble MR.JUSTICE M.C.PATEL

1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

EXECUTIVE ENGINEER

Versus

VAKHATSINGH SHIBHAI

Appearance:

FIRST APPEAL NOS.3292 of 1998 to 3298 of 1998

MR GHANSHYAM AMIN for Petitioner

MR KM SHETH for Respondent No. 1

MR RC KODEKAR, AGP for Special Land Acquisition
Officer

FIRST APPEAL NOS.3299 of 1998 to 3304 of 1998

MR GHANSHYAM AMIN for Petitioner

MR KM SHETH for Respondent No. 1
MS NANDINI JOSHI, AGP for Special Land Acquisition Officer

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.C.PATEL

Date of decision: 17/08/2000

ORAL (COMMON) JUDGEMENT

(Per: J.M. Panchal, J.)

The Executive Engineer, Narmada Yojna Main Canal, Division NO.5, Vadodara has challenged legality of judgment and award dated May 6, 1997 rendered by the Learned 2nd Extra Assistant Judge, Panchmahals at Godhra in Land Acquisition Reference Nos.57 of 1995 to 60 of 1995 and Land Acquisition Reference Nos. 197 of 1989 to 204 of 1989 by filing above numbered Appeals under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Code of Civil Procedure, 1908.

2. The lands of the claimants were acquired pursuant to publication of Notification issued under Section 4(1) of the Land Acquisition Act, 1894 (the 'Act' for short) on May 22, 1986. After issuing notice to the claimants, the Special Land Acquisition Officer offered compensation to the claimants at the rate of Rs.9,000/- per hectare for Jiyarat lands, Rs.1,350/- per hectare for Piyat lands, and Rs.100/- per hectare for Kharaba lands by his award dated March 27, 1989. Thereafter, notice under Section 12(2) of the Act was issued on March 29, 1989 and the same was served on the same date i.e. March 29, 1989 on the claimants. Section 18 of the Act stipulates that any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the court, whether his objection be to the measurement of the land, the amount of compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested. As per sub-section 2 of Section 18, every such application has to be made within six weeks of the receipt of the notice from the Collector under Section 12(2) of the Act. Therefore, the period of six weeks expired on May 10, 1989. There is no dispute that within six weeks the claimants had neither applied for obtaining certified

copy of the award of the Special Land Acquisition Officer nor made applications as contemplated by Section 18(1) of the Act. The record of the case indicates that the certified copy was applied for only in July, 1990 and in some cases, in August, 1990. Thereafter, applications as contemplated by Section 18(1) of the Act were submitted on July 24, 1990. After receipt of the applications, references were made to District Court, Panchmahals at Godhra which were registered as Land Acquisition Reference Nos.197 of 1989 to 204 of 1989 and 57 of 1995 to 60 of 1995. When the references were taken up for final hearing, an objection was raised on behalf of the acquiring authorities that the applications seeking references were time barred and should be dismissed. However, the Reference Court took the view that while considering the question of delay, the court has to interpret the phrase "sufficient cause" appearing in Section 5 of the Limitation Act liberally and the substantial rights of the parties should not be allowed to suffer unless there is malafide or that the party wanted to take undue advantage of his own wrong. In view of this conclusion, the Reference Court placed reliance on the decision of the High court in Bhikhabhai vs. State 1988 (1) GLR 688 and held that the delay caused in filing Reference applications was condonable. As the claimants had filed application under Section 5 of the Limitation Act for condonation of delay, those applications were granted and the Reference applications were thereafter heard on merits. Placing reliance on previous awards, the Reference Court held that the claimants were entitled to compensation at the rate of Rs.7/- per square metre by the impugned award which has given rise to the present Appeals.

3. The learned counsel for the appellants submitted that the References were absolutely time barred and therefore the Reference Court had no jurisdiction to entertain the References or even to condone the delay. Mr. K.M. Sheth, learned counsel for the claimants has supported the judgment impugned in the Appeals and submitted that the discretion exercised by the Reference Court in condoning delay should not be interfered with by this court in the present Appeals. In the alternative, the learned counsel for the claimants submitted that the direction given by the High Court in First Appeal NO.3333 of 1998 to First Appeal No.3344 of 1998 decided on April 28, 1999 by Division Bench comprising M.R. Calla and R.P. Dholakia, JJ. should be given having regard to the facts of the case.

4. We have heard the learned counsel for the parties and taken into consideration the record of the case. The Full Bench of Gujarat High Court in Memon Ibrahim Haji Latif Sukhediwala vs. Officer on Special Duty (Land Acquisition) & another 1994 (1) GLR 296 has laid down that the Collector is not a court within the meaning of Section 5 of the Limitation Act, 1963 and he has no power to condone delay in making an application for a reference. What is emphasised in the decision is that before making a reference, it must be seen by the Collector that all the three conditions stipulated in Section 18(1) are satisfied and the court has a power to reject a reference which does not satisfy conditions mentioned in Section 18. The pertinent observations made by the Full Bench are as under:

"The provisions of Sec. 5 of the Limitation Act, 1963, will apply only to applications to Courts. The mere vesting of certain powers under the Civil Procedure Code on the Collector does not elevate him to a Court. The application for reference ought to have been made within the time prescribed therefor, and the making of an application for reference within the time prescribed is a sine qua non for a valid reference by the Collector. When such is the rigour of the rule, we do not think that it could be watered down on an assumption of a power to condone the delay or, in other words, to extend the time. No such power is discernible for him. The second proposition deducible from the above pronouncement is; the Collector exercises under Sec.18 of the Land Acquisition Act, no judicial power and the Collector is not a Court subordinate to the High Court. The earlier pronouncements of the Apex Court, already referred to, have settled the rule that the provisions of the Limitation Act, 1963 apply only to proceedings in 'Courts' and not to appeals or applications before bodies, other than Courts, such as quasi judicial Tribunals or Executive Authorities, notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on Courts under the Code of Civil Procedure, or the Code of Criminal Procedure. The Collector under Sec.18 of the Land Acquisition Act, discharges only administrative functions and not judicial functions and he could not have the character of a 'Court' for the purpose of invoking the

provisions of the Limitation Act, 1963. The fulfilment of the conditions, including the condition prescribing the time limit for asking for a reference under Sec.18 of the Act, is a sine qua non for the exercise of the power by the Collector to make a reference."

Again in Officer on Special Duty (Land Acquisition) & another vs. Shah Manilal Chandulal 1996 (2) GLR 626, the Supreme Court has authoritatively pronounced that the Collector being not a court cannot condone delay in making an application for reference and an invalid reference made by the Collector cannot be entertained by a court.

5. In view of the settled legal position as emerging from the decisions which are quoted above, we are of the opinion that the reference applications submitted by the claimants were time barred and could not have been entertained by the Reference Court. The impugned judgment, therefore, cannot be sustained and is liable to be set aside.

6. However, in First Appeal No.3333 of 1998 to First Appeal No.3344 of 1998 decided on April 28, 1999 by Division Bench comprising M.R. Calla and R.P. Dholakia, JJ., following directions were given relying upon the observations of the Supreme Court in the case of Mohammed Hasnuddin vs. State of Maharashtra AIR 1979 SC 404:-

"In the facts and circumstances of the present cases when it was argued before the reference court itself by the learned district Government Pleader that in view of the judgment of the Gujarat High court in First Appeals Nos.1725 of 1994 to 1743 of 1994 decided on 6.2.1995, at least the claimants are entitled to Rs.7/sq.mtr. we trust and feel assured that the present appellant will consider to make an ex-gratia payment to the claimants in all these cases which would be sufficient to meet the requirements of reasonable compensation commensurate with the market value of the lands acquired in this case at the rate of Rs.7/- per sq.mtr. as was submitted before the reference Court by the District Govt. Pleader and we expect that even if these appeals have been allowed on the ground that the applications seeking reference were time barred, the appellant who is a functionary of a

welfare State and a virtuous litigant would not deny and disown an otherwise honest and just claim of the claimants to the extent it was conceded by the District Govt. Pleader himself before the reference Court in this case."

Having regard to the facts of the case, we are of the opinion that the directions as were given by the Division Bench in the above referred to First Appeals deserve to be granted while disposing of these Appeals.

7. In the result, the Appeals are allowed. The impugned common judgment and award is set aside. The references are dismissed as time barred with no orders as to costs. In view of the judgment of the Gujarat High Court in First Appeal No.1725 of 1994 to 1743 of 1994 decided on February 6, 1995, at least the claimants are entitled to compensation at the rate of Rs.7/- per square metre. Therefore, we trust and feel assured that the present appellant will consider to make an ex-gratia payment to the claimants in all these cases which would be sufficient to meet the requirements of reasonable compensation commensurate with the market value of the land acquired in this case at the rate of Rs.7/- per square metre as was submitted before the Reference Court by the District Government Pleader and we expect that though the Appeals are allowed on the ground that the applications seeking references were time barred, the appellant who is a functionary of a welfare State and a virtuous litigant would not deny and disown an otherwise honest and just claim of the claimants to the extent it was conceded by the District Government Pleader himself before the Reference Court in this case. With these observations, the Appeals are disposed of. There shall be no orders as to costs.

(J.M. Panchal, J.)

(M.C. Patel, J.)

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